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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/876,781	06/07/2001	David S. Klutz	2957	8854

7590 12/12/2005
Terry T. Moyer
P. O. Box 1927
Spartanburg, CA 29304

EXAMINER

BOYD, JENNIFER A

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 12/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/876,781

Applicant(s)

KLUTZ ET AL.

Examiner

Jennifer A. Boyd

Art Unit

1771

Period for Reply
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The Applicant's Amendments and Accompanying Remarks, filed September 28, 2005, have been entered and have been carefully considered. Claims 1 – 22 and 32 – 75 are cancelled and claims 23 – 31 are pending. In view of Applicant's cancellation of claims 32 – 75, the Examiner withdraws the rejection as being anticipated or obvious over Leonard Farias' research report entitled *Comparison Study of Polymer Research Finish to a Conventional Resin System: A Laundering Study* as detailed in the Office Action dated January 21, 2003. The invention as currently claimed is unpatentable for reasons herein below.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

3. Claims 23 – 24, 26, 29 and 30 remain rejected under 35 U.S.C. 102(b) as being anticipated by Leonard Farias' research report entitled *Comparison Study of Polymer Research Finish to a Conventional Resin System: A Laundering Study*. The details of the rejection can be found in paragraphs 8 – 9 of the Office Action dated January 21, 2003. The rejection is maintained.

Art Unit: 1771

4. Claims 23 – 24, 26 and 30 remain rejected under 35 U.S.C. 102(b) as being anticipated by Cain (US 3,634,126). The details of the rejection can be found in paragraph 4 of the Office Action dated March 24, 2005. The rejection is maintained.

Claim Rejections - 35 USC § 103

5. Claims 25, 27 and 28 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Leonard Farias' research report entitled *Comparison Study of Polymer Research Finish to a Conventional Resin System: A Laundering Study*. The details of the rejection can be found in paragraph 13 of the Office Action dated January 21, 2003. The rejection is maintained.

6. Claims 30 - 31 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Schwemmer et al. (US 3,811,834). The details of the rejection can be found in paragraph 8 of the Office Action dated March 24, 2005. The rejection is maintained.

Response to Arguments

7. Applicant's arguments filed September 28, 2005 have been fully considered but they are not persuasive.

Applicant argues that, while the Farias report suggests applying a resin to one side of the fabric and softener/lubricant to the other side, nothing within the Farias report teaches or suggests that they are applied in such a way that they will be substantially isolated on the side to which they are applied. In Leonard Farias' research report entitled *Comparison Study of Polymer Research Finish to a Conventional Resin System: A Laundering Study*, it is stated that "the

Art Unit: 1771

optimum resin/softener system may require the application of the resin to one side of the fabric (back) and the application of softener/lubricant(s) to the opposite side (face) of the fabric in order to produce a quality value added product with respect to color retention and resistance to frosting". The Farias report states that the resin and softener/lubricant are each applied to opposite faces. According to the Merriam-Webster dictionary, the term isolated is defined as "to set apart from others". Upon Application, the resin and softener/lubricant are set apart from each other by applying the two systems on opposing sides. According to Merriam-Webster dictionary, the term "substantially" is defined as "being largely but not wholly that which is specified". Although, the Examiner does concur that a portion of resin and softener/lubricant systems will shift from the respective application sides, a *substantial* portion will remain on the application sides. Therefore, a large portion, or "a substantial portion", of each of the substances will remain at the point of application, or each of the respective faces. In combination, the term "substantially" lessens the degree of isolation and the Examiner submits that the rejection remains valid. The Applicant directs the Examiner's attention to the process described on page 4 of the Farias report. Although the process suggests dipping the fabric into a bath containing both the resin and softener, the process is only one embodiment of Farias. It should be noted that "disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments". *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). As discussed above, Farias clearly states that it is also possible to create a fabric system where "the optimum resin/softener system may require the application of the resin to one side of the fabric (back) and the application of softener/lubricant(s) to the opposite side (face) of

Art Unit: 1771

the fabric in order to produce a quality value added product with respect to color retention and resistance to frosting”.

Applicant argues that a patent has been issued on the process for producing Applicant’s claimed fabric and Applicant submits that this suggests that the knowledge required to substantially isolate the treatments on each face as claimed was not available to those of ordinary skill in the art at the time the invention was made. The Examiner respectfully argues the contrary. It should be noted that each patent application is examined separately and each on its own merits. Additionally, if the “substantial isolation” only occurs due to certain process limitations, it is highly suggested that the Applicant incorporate process limitations into the claim to create a product by process claim.

Applicant argues that Cain does not teach Applicant’s “substantial isolation” of the softener and durable-press resin. Applicant argues that Cain’s concentration of coating at or near the exposed surfaces does not equate to Applicant’s “substantial isolation”. Although Cain teaches impregnating the fabric with each composition and then concentrating the composition at or near the exposed surface of the fabric, the final product has two surfaces where each surface of the fabrics contains predominately different compositions (Abstract). The Examiner submits that this can be equated to Applicant’s “substantial isolation”. Please refer to the above paragraph for a full explanation of the interpretation of the term “substantial isolation”.

Applicant argues that Schwemmer specifically teaches away from a fabric having a resin substantially isolated on one of its surfaces. “The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art for all they contain”. *In re Heck*, 699 F.2d

Art Unit: 1771

1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Lemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). See MPEP 2123. Therefore, Schwemmer's statement should not necessarily be considered a teaching away, because it does suggest that the concept of isolating the chemistries on each face is known in the art even though it is not desired by Schwemmer.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A. Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

Art Unit: 1771

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer Boyd
December 5, 2005



Ula C. Ruddock
Primary Examiner
Tech Center 1700